BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.04.2023

Delivered on : **02.06.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

Crl.O.P.(MD) No.3209 of 2021
and
Crl.M.P.(MD)Nos.1754 & 1756 of 2021

1.S.Sethuraman
2.S.Thirumaran ... Petitioners / Accused Nos.2 and 4

Vs.

G.Selvamanikandan ... respondent / Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the proceedings in C.C.No. 119 of 2021, on the file of the Judicial Magistrate No.II, Kovilpatti and to quash the same as against the petitioners.

For Petitioners : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.Khari Kharadas

ORDER

This petition is filed to quash the proceedings in C.C.No. 119 of 2021, on the file of the Judicial Magistrate No.II, Kovilpatti.

2.The allegation against the petitioners is that the petitioners borrowed a sum of Rs.16,00,000/- on 14.05.2019 and he promised to repay the same within a period of six months. After repeated demands, the second accused issued a post dated cheque drawn on Tamilnadu Merchantile Bank, Palayamkottai Branch, on 21.10.2020, in favour of the complainant and he directed the complainant to present the cheque. The complainant presented the cheque on 23.11.2020, through State Bank of India, Kovilpatti Branch and the cheque was dishonored with an endorsement "Account Closed". The accused Nos.2 and 4 are jointly or severally liable for the dishonor of the cheque and hence a legal notice was sent. Later a private complaint was registered.

3. On the side of the petitioners, it is stated that the first petitioner is a partnership Firm carrying on business in purchase of gold and silver under the name and style of “M/s Shree Jewel Paarc”. A2 to A4 are the partners of the Firm. The petitioners are A2 and A4 and that they are not the drawers of the cheque and that they are not the account holders, or signatories of the disputed cheque, the legal requirements under Section 141 of Negotiable Instruments Act were not fulfilled that cannot be an offence transaction against the partners, unless and until

they have a Role in the affairs of the partnership his firm or having the control over the business of the Firm. Simply because, they are the partners, they cannot be made liable under Section 138 of Negotiable Instruments Act,

4. On the side of the petitioners, it is further sated that to constitute an offence under Section 138 of Negotiable Instruments Act, there should be a Legal enforceable Debt. The amount was borrowed on 09.06.2014, the complainant approached the Court, after seven years and the claim was time barred. The first petitioner is aged about 82 years, the second petitioner is aged about 53 years and only with a *malafide* intention, they were impleaded in the case and prayed the case to be quashed.

5. On the side of the petitioners, it is further sated that only A3 was the signatory in the cheque. The alleged loan was time barred, Section 138 of the Negotiable Instruments Act is not maintainable against the petitioners, who were not the signatories and who were not taking acting participation in the transaction.

6. A Judgment of this Court in Crl.O.P.(MD)No.27970 of 2018, dated 22.01.2019 is cited, wherein, it is stated as follows:-

> *"3. It is seen from the allegations made in the complaint that this petitioner was only a co-applicant for the loan and this petitioner has not signed the cheque and it was only A1, who had signed the cheque. Therefore, this petitioner should not have been made as an accused person.*
>
> *4. The facts of the case is squarely covered by the judgment in* ***R.Priyadharshini V. LIC Housing Finance Limited, reported in 2006 (1) LW (Crl.) 58 and Aparna A.Shah Vs. Sheth Developers Private Limited, reported in (2013) 8 Supreme Court Cases 71****. In view of the above, the proceedings as against this petitioner is liable to be quashed."*

7. On the side of the petitioners, it is sated that a time barred debt cannot be the basis for filing a case under section 138 of the Negotiable Instruments Act and that a time barred debt is not legally enforceable.

8. A Judgment of this Court reported in ***2020-3-MWN (Cr.)-DCC-101 Mad) (N.Mohan V. P.Suresh)*** is cited, wherein, it is stated as

follows:-

> *"9.This Court is of the considered view that debt that is sought to be claimed from the petitioner by the respondent, is a time barred debt. Therefore, the time barred debt can never fall within the requirements of Section 138 of Negotiable Instruments Act, which talks about only an existing debt or a liability. That apart, the respondent has gone ahead and filed this complaint in the year 2014, after coming to know about the suit filed by the petitioner. Therefore, even according to the averments made in the complaint, the respondent is not able to explain as to what happened during the period from 2009 to 2014. The complaint is totally silent on this aspect."*

9. It is stated that the petitioners have no active role in the transaction of the Company and that as per the wordings in the private complaint, the petitioners have no active role and that the specific role of the petitioners was not mentioned in the complaint.

10. On the side of the respondent, it is stated that the accused borrowed the loan on 09.06.2014, after approaching the petitioner several times, only on 23.11.2020, they gave the cheque leaf. The first accused is the partnership Firm and as per the partnership deed

all the accused are liable and that the relevant paragraph of the partnership Firm reads as follows:

> *"11.The second and third partners (Thiru.S. Murugavel and Thiru S.Thirumaran) have power to operate Bank Accounts draw bills, Hundies and to other activities governed under Negotiable Instruments Act and to appear before all the Government Departments and also conduct Civil, Criminal and other court proceedings, for and on behalf of the firm and in the interest of the firm.*
>
> *13. The firm may obtain loans from Banks or third parties for the purpose of partnership business and the necessary documents if any shall be executed by the partners jointly or severally on behalf of the firm."*

11. On the side of the respondent, it is stated that only after recording the evidence, the role of the petitioners in the case can be traced out. A judgment of this Court reported in ***2023-2-CTC-176 (K.A.Naushad V. Liya Creation)*** is cited, wherein, it is stated as follows:

> *" Two partners, who are not Managing Partners seeking quashing the complaint as against them, this Court held that partners being Working Partners of Firm, prima facie reason to implead them as accused, only on trial specific role of each partner of firm can be ascertained, in the premature stage to presume that only Managing Partner was involved with respect to subject*

transactions, the presumption before proof to cause prejudice to complainant. The petitioners to be subjected to undergo trial and the quash petition is dismissed."

12. The contention on the side of the petitioners is that the petitioners did not take active participation in the affairs of the Firm and they cannot be prosecuted, just because, they are partners in the Firm.

13. On the side of the respondent, it is further stated that the petitioners are misleading the trial Court and they gave a false information that stay order is pending and that they are delaying the trial Court proceedings by this wrong representation.

14. A verification of the E - Court case status reveals that from 08.12.2022, the case was adjourned under the caption "for stay". It is admitted that the petitioners are the partners in a Partnership Firm. The claim of the petitioners is that the loan is time barred. Whether the loan was already time barred or whether the loan was subsequently acknowledged can be decided only after the trial.

15. Whether the petitioners took active participation in the firm or not can be decided only after the trial. Whether the petitioners are severally or jointly liable for the affairs of the Firm and whether the the petitioners are liable for the loan of the partnership Firm cannot be decided by this Court at this stage and this case require a detailed trial. In the above circumstances, this petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes/No **02.06.2023**
Index : Yes/No
Ls

To

1.The Judicial Magistrate No.II,
Kovilpatti

2.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

R.THARANI. J.

Ls

Crl.O.P.(MD)No.3209 of 2021

02.06.2023